

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

A.W., a minor child, by and through)
JOHN DOE and JANE DOE, as Next)
Friends and Guardians,)

8:14CV256

Plaintiffs,)

v.)

MEMORANDUM
AND ORDER

DOUG PETERSON, Attorney)
General of Nebraska; COLONEL)
JOHN A. BOLDUC, Superintendent)
of Law Enforcement and Public)
Safety for Nebraska State Patrol;)
PAUL WOOD, County Attorney for)
Red Willow County; and GENE)
MAHON, Sheriff for Red Willow)
County,)

Defendants.)

On March 21, 2016, the court entered a Memorandum and Order (Filing 69) and Judgment (Filing 70) permanently enjoining Defendants, and each of them, from enforcing Neb. Rev. Stat. § 29-4003(1)(a)(iv) against Plaintiffs. The Judgment was affirmed by the United States Court of Appeals for the Eighth Circuit on July 31, 2017 (Filings 74, 75).

On September 6, 2018, Plaintiffs filed an Emergency Motion to Keep Injunction in Place (Filing 78). Counsel's affidavit, attached to the Motion, shows that on September 4, 2018, the Nebraska State Patrol Sex Offender Registration Division sent out letters to offenders who were removed from the Sex Offender Registry as a result of the Eighth Circuit's opinion on the appeal of this case, *A.W. by and through Doe v. State*, 865 F.3d 1014 (8th Cir. 2017). The letter advised recipients that "due to a recent Nebraska Supreme Court opinion in *State of Nebraska v. Nathan W. Clemens*,

No. S-17-872 (issued by the Nebraska Supreme Court on 7/27/18), you are now required to register as a sex offender under Nebraska law.” Recipients were directed to “report immediately to your County Sheriff’s Office to register as a Nebraska sex offender.” A copy of the letter is attached to the affidavit (Filing 78-1), but any identifying information appears to have been redacted.

Counsel’s affidavit does not clearly state that Plaintiffs received this letter, but, assuming that they did, this action constitutes a clear violation of the court’s order permanently enjoining Defendants from enforcing Neb. Rev. Stat. § 29-4003(1)(a)(iv) against Plaintiffs. That statute provides: “(1)(a) The Sex Offender Registration Act applies to any person who on or after January 1, 1997: ... (iv) Enters the state and is required to register as a sex offender under the laws of another village, town, city, state, territory, commonwealth, or other jurisdiction of the United States.”

The court therefore will grant Plaintiffs’ Motion and reiterate that the court’s permanent injunction remains in full force and effect, despite the Nebraska Supreme Court’s decision in *Clemens*. Defendants will also be ordered to show cause why they should not be held in contempt and punished for failing to comply with the court’s order.

IT IS ORDERED:

1. Plaintiffs’ Emergency Motion to Keep Injunction in Place (Filing 78) is granted. Defendants, and each of them, remain permanently enjoined from enforcing Neb. Rev. Stat. § 29-4003(1)(a)(iv) against Plaintiffs.
2. Pursuant to Federal Rule of Civil Procedure 25(d), Colonel John A. Bolduc is substituted as a party defendant for Colonel Bradley Rice. The clerk of the court shall make the substitution on the docket sheet.

3. Defendants shall appear in Courtroom No. 2, Federal Building, 100 Centennial Mall North, Lincoln, Nebraska, on Tuesday, September 11, 2018, at 2:00 p.m., and show cause why they should not be held in contempt and punished for failing to comply with the court's order.

DATED this 7th day of September, 2018.

BY THE COURT:

s/ Richard G. Kopf

Senior United States District Judge